

Expanding Eligibility for Sentencing Alternatives for Parents¹
RCW 9.94A.655 (“FOSA”)

	Former Eligibility	Bill as Passed the Legislature
Court Based Option	RCW 9.94A.655	Newly amended RCW 9.94A.655
Length of prison sentence	High end of standard range is more than 12 months	Same, no changes.
Which current convictions qualify?	No prior or current conviction for a felony that is a sex or violent offense.	The person has no current conviction for: A felony sex offense; or a serious violent offense; or a felony offense where the offender was armed with a firearm or deadly weapon in the commission of the offense; or no current conviction for a violent offense.
Which prior convictions qualify?	No prior felony convictions that are violent or sex offenses	The person has no prior conviction for: A felony sex offense; a serious violent offense; or a felony offense where the offender was armed with a firearm or deadly weapon in the commission of the offense; Adds prior convictions that are not listed in paragraph
How are noncitizens treated?	The person has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence	Removed. No Ban on noncitizens applying for FOSA

¹ Drafted by D’Adre Cunningham, Incarcerated Parents Project Resource Attorney at the Washington Defender Association, on 11 March 2020.

Signing DCYF releases of information for DOC and the court	The person signs any release of information waivers required to allow information regarding current or prior child welfare cases to be shared with the department and the court.	Same changes.
Which parents and caregivers can apply?	The person is one of these: <ul style="list-style-type: none"> • physical custody of his or her minor child or • is a legal guardian or custodian with physical custody of a child under the age of eighteen at the time of the current offense 	The person is one of these: <ul style="list-style-type: none"> • A parent with physical custody of a minor child • An expectant parent (a pregnant or other parent awaiting the birth of his or her child, or an adoptive parent or person in the process of a final adoption) • A legal guardian of a minor child • A biological parent, adoptive parent, custodian, or stepparent with a proven, established, ongoing, and substantial relationship with a minor child that existed at the time of the offense
How are prior juvenile adjudications treated?	Juvenile adjudications are treated as adult offenses when considering eligibility.	Prior juvenile adjudications are not considered offenses when considering eligibility under this section, except for any sex offense, serious violent offense, or felony offense where the offender was armed with a firearm or deadly weapon in the commission of the offense.
Court may order a family impact statement.	No.	Yes.
Information about open child welfare involvement	Information about open child welfare cases in court only	<i>Adds information to be reported to include open CPS investigations</i> <i>Adds language that the court shall also give great weight to the minor child's best interest.</i>
Prior convictions against children to be reported by DCYF	Yes.	Same, no change.

<p>The existence of a prior substantiated referral of child abuse or neglect or of an open child welfare case shall not, alone, disqualify the parent from applying or participating in this alternative.</p>	<p>Not in current statute.</p>	<p>This bill adds this language and additionally says:</p> <p>The court shall consider whether the child-parent relationship can be readily maintained during parental incarceration, and whether, due to the existence of an open child welfare case, parental incarceration exacerbates the likelihood of termination of the child-parent relationship.</p>
<p>Term of community custody</p>	<p>12 months</p>	<p>May be extended up to an six (6) additional months if person is being sanctioned rather than simply revoked.</p>
<p>Earned Release time available, if revoked</p>	<p>No.</p>	<p>Yes.</p>
<p>Liability clause</p>	<p>Not in current law</p>	<p><i>Adds language that exempts the state (and its employees, officers, or agents) from liability for acts committed by parents on this alternative.</i></p>
<p>Definition of the term “minor child”</p>	<p>Defined at RCW 9.94A.030 (32):“Minor Child” means a biological or adopted child of the offender who is under age eighteen at the time of the offender’s current offense.</p>	<p><i>Deletes definition at RCW9.94A.030 (32). Now defined at RCW 9.94A.655 (10)(b): “Minor Child” means a child under the age of eighteen.</i></p>